



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT 10 2007

OFFICE OF  
AIR AND RADIATION

The Honorable Henry Waxman  
Chairman  
Committee on Oversight and Government Reform  
US House of Representatives  
Washington, DC 20015

Dear Mr. Chairman:

This is a follow up to the Environmental Protection Agency's (EPA) interim letters, dated October 3, 2007 and October 4, 2007, responding to your letters of September 19, 2007 and September 26, 2007 to EPA Administrator Stephen Johnson, concerning the Deseret Power Plant pre-construction permit and issues related to greenhouse gas emissions (GHGs). We understand and share your concern about the effects of climate change on the global environment, and are actively studying several paths for addressing GHG emissions under authorities provided in the Clean Air Act ("the Act").

EPA remains firmly committed to addressing the long-term challenge of global climate change. Well before the Supreme Court's decision in *Massachusetts v. EPA*, the Agency was engaged in a range of GHG mitigation efforts. Following the Supreme Court's clarification of the Agency's authority under the Clean Air Act with respect to GHGs, EPA accelerated its efforts to develop a strategy for addressing GHG emissions under the Act's provisions.

A key component to this strategy concerns motor vehicle GHG emissions. Consistent with President Bush's May 14, 2007 Executive Orders which are based on his "Twenty in Ten" plan, EPA is working with other Federal Agencies to coordinate our regulatory efforts aimed at cutting GHG emissions from motor vehicles and fuels. EPA is directing a substantial amount of resources and energy towards this effort, and we are moving quickly: we remain on target to propose regulatory actions by the end of this year. More broadly, we are continuing to analyze the implications of the Supreme Court decision on the Act's various stationary source provisions.

At the same time, EPA has a responsibility to continue processing PSD preconstruction permit applications, such as the one submitted over three years ago by Deseret Power. We believe, however, that EPA does not currently have the legal authority under the PSD program to impose emissions limitations for GHGs on power plants and other sources.

In addition to the Agency's obligation to review permits according to current law, the nation's energy needs must also be considered. Deseret Power first submitted its application for a preconstruction permit on April 13, 2004, for a planned 110 megawatt waste-coal fired power plant in Uintay County, Utah. According to the application, The new unit will employ state-of-the-art pollution control technology, and will provide a reliable supply of energy to, among other places, St. George, Utah, one of the top five fastest-growing cities in the nation. The City of St. George is committed to including renewable resources and efficiency improvements in its energy portfolio. The city is beginning to exhaust Deseret's existing power generation resources, however, and is therefore dependent on the Deseret project to maintain a reliable supply of energy.

EPA is conducting the same level of careful analysis and review for the Desert Rock, White Pine, and Carlson permit applications. We will continue to fulfill our responsibility to implement the law and consider pending applications, even as we proceed with our review and analysis of policy options to address GHG emissions under the Clean Air Act.

Your letters requested a number of specific documents relating to the Deseret Power application; the consideration of greenhouse gas emissions when making permitting decisions for new coal or gas-fired plants; or Clean Air Act regulatory authority that could apply to greenhouse gas emissions from coal or gas-fired plants. EPA respects your role as Chairman and is committed to providing the Committee to the extent possible information necessary to satisfy its oversight interests consistent with our Constitutional and statutory obligations. While we have not yet completely identified, assembled, and reviewed the documents responsive to your request, we are enclosing with this letter a number of responsive documents.

Please note that EPA has identified an important Executive Branch confidentiality interest in a number of the documents. These documents reflect the internal advice, recommendations, and analysis of Agency staff and attorneys about the proposed permit and legal decisions under the Clean Air Act. It is critical for policymakers to obtain a broad range of advice and recommendations from Agency staff and to be able to properly execute their statutory obligations under the Clean Air Act and other environmental statutes without concern about the chilling effect that would occur, for example, if Agency employees believed their internal opinions and analyses may be the subject of public debate during future rulemaking.

However, in an effort to accommodate the Committee's oversight interest in this matter, EPA we are making these documents available. We have copied these documents on paper with a watermark that reads: "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized Only to Congress for Oversight Purposes." Through this accommodation, EPA does not intend to waive any confidentiality interests in these documents or similar documents in other circumstances. EPA respectfully requests that the Committee and staff protect this document and the information contained in it from further dissemination. Specifically, should the Committee determine its legislative mandate requires further distribution of this

confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

The permitting record, including the Statement of Basis and Response to Comments, provides a complete explanation of the policy, legal, and technical grounds for issuance of the Deseret permit. These documents are available at <http://www.epa.gov/region8/air/permitting/deseret.html>. The grounds for issuance of the permit will be reviewed by administrative law judges on EPA's Environmental Appeals Board. The Sierra Club filed a petition for review of the matter on October 1, 2007, and no construction is authorized while this administrative appeal is pending.

Again, thank you for your letters. As promised in our interim letter of October 4<sup>th</sup>, we expect to respond to the remainder of your document request by Thursday, October 11<sup>th</sup>. If you have any further questions please contact me, or your staff may call Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2095.

Sincerely,



Robert J. Meyers  
Principal Deputy Assistant Administrator

Enclosure

## Questions and Answers for Chairman Waxman

**1. In refusing to consider global warming impacts in this permit decision, EPA stated that it is “working diligently to develop an overall strategy for addressing the emissions of carbon dioxide (CO<sub>2</sub>) and other [greenhouse gases] under the Clean Air Act.” Will EPA’s “overall strategy” include issuing regulations, in the near term, to control greenhouse gas emissions from stationary sources (as well as mobile sources), as the Clean Air Act requires?**

Answer: Consistent with President Bush’s May 14, 2007 Executive Orders based on his “Twenty in Ten” plan, EPA is working with other Federal Agencies to coordinate our regulatory efforts aimed at cutting GHG emissions from motor vehicles. We remain on target to propose regulatory actions by the end of this year.

With respect to stationary sources, EPA is in the process of analyzing the implications of the recent Supreme Court decision, including consideration of relevant policy, economic, and legal matters. It is premature to speculate what final decisions may result from this process.

**1.a. If EPA is not committed to including regulations for stationary source emissions in this “overall strategy,” why did EPA mention such a strategy in the context of a permitting decision for a stationary source?**

Answer: EPA is considering all of the regulatory and nonregulatory implications of the recent Supreme Court Case on existing stationary and mobile source regulations. This is a complex area of law and policy. We are moving forward with careful consideration of the implications of our actions.

Even though we currently lack the authority to impose PSD permit limitations or other restrictions directly on the emissions of unregulated pollutants, it is important to let those commenting know that we are working on the issue.

**1.b. If EPA will soon issue regulations for greenhouse gases from stationary sources, why is EPA rushing to permit sources in advance of such regulations without considering the sources’ global warming impacts?**

Answer: As indicated in our response to questions 1 and 1.a above, EPA is currently in the process of evaluating a wide range of legal and policy considerations with respect to the control of GHG emissions from stationary sources. Under current law, we lack the authority to impose emissions limits for unregulated pollutants. Notwithstanding the current status of our legal authority with respect to GHGs under the Prevention of Significant Deterioration (PSD) program, EPA continues to have the responsibility to process pending permit applications.

**2. EPA also stated that “we believe that any action EPA might consider taking with respect to regulation of CO<sub>2</sub> or other [greenhouse gases] in PSD [prevention of significant deterioration] permits or other contexts should be addressed through notice and comment rulemaking...” Is EPA currently working on a notice and comment rulemaking to address greenhouse gases in the context of PSD permits or other actions related to stationary sources? If not, why not, given the statement above?**

Answer: As mentioned above, the Agency continues to evaluate the potential effects of the Supreme Court decision on the mobile and stationary provisions of the Clean Air Act. This work includes an analysis of the implications of establishing significance levels of greenhouse gas emissions under the PSD program. Should EPA decide to move forward with such a rulemaking, it would necessarily be done via a notice and comment rulemaking process.

**3. Since permit decisions are made pursuant to a notice and comment process, why would EPA not use this mechanism to address greenhouse gas emissions from major new sources, at least on an interim basis while an “overall policy” is being developed?**

Answer: EPA currently lacks the authority to impose PSD permit limitations or other restrictions directly on the emissions of unregulated pollutants, and as such EPA is unable to use this mechanism to address GHG emissions from major new stationary sources.